

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3
4 UNITED STATES OF AMERICA,

5 Plaintiff,

Criminal Action
No. 19-cr-10104-ADB-1

6 v.

September 17, 2020

7 DIOVANNI CARTER,

8 Defendant.

Pages 1 to 51

9 App No. 20-193

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12 TRANSCRIPT OF SENTENCING HEARING
13 BEFORE THE HONORABLE ALLISON D. BURROUGHS
14 UNITED STATES DISTRICT COURT
15 JOHN J. MOAKLEY U.S. COURTHOUSE
16 ONE COURTHOUSE WAY
17 BOSTON, MASSACHUSETTS 02210

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PROCEEDINGS

(The following proceedings were held in open court before the Honorable Allison D. Burroughs, United States District Judge, United States District Court, District of Massachusetts, at the John J. Moakley United States Courthouse, 1 Courthouse Way, Boston, Massachusetts, on September 17, 2020.

8 The defendant, Diovanni Carter, is present with
9 counsel. The Assistant U.S. Attorney is present.)

10 THE CLERK: This is criminal matter 19-10104,
11 United States versus Di Giovanni Carter. Will counsel identify
12 themselves for the record.

13 MR. MALLARD: Good morning, Your Honor. Philip
14 Mallard for the United States together with Glenn MacKinlay.

15 MR. SULTAN: Good morning, Your Honor. James
16 Sultan with Kerry Ferguson for the defendant.

17 THE COURT: All right. We are here for
18 Mr. Carter's sentencing. I will tell you that this is the
19 first proceeding I've done in person since they reconfigured
20 the courtroom. I'm doing it with a mask on. I think I'm
21 being amplified adequately, but if for any reason anyone is
22 having any trouble hearing me or you need me to repeat
23 anything, just raise your hand or let me know, and I'll do
24 that. This is new and I'm feeling my way like everybody
25 else.

1 In preparation for today's sentencing, I have
2 received and read the presentence report as revised on
3 July 9 -- is that July 9? I can't read my own handwriting
4 September 9, 2020; the defendant's sentencing memorandum
5 which was filed on 9/11; the government's sentencing
6 memorandum which was filed also on 9/11; I have read all of
7 the attachments to both sentencing memorandums which included
8 several letters filed on behalf of the defendant; some other
9 paperwork from both sides. And I have read and received the
10 two victim impact statements. Also I've listened to the
11 recordings that the government submitted.

12 That's my list of what's been submitted and what I
13 should have read and considered. Does anybody think I'm
14 missing anything? Mr. Mallard, Mr. MacKinlay?

15 MR. MALLARD: I think that is it.

16 THE COURT: Mr. Sultan?

17 MR. SULTAN: Nothing else.

18 THE COURT: Probation?

19 THE PROBATION OFFICER: No, Your Honor. You have
20 everything.

21 THE COURT: I take it nothing has been withheld
22 from the presentence report?

23 THE PROBATION OFFICER: No, Your Honor.

24 THE COURT: Mr. Sultan, have you gone over it with
25 your client?

1 MR. SULTAN: Yes, Your Honor.

2 THE COURT: Mr. Carter, have you had ample
3 opportunity to review the presentence report and discuss it
4 with your lawyer?

5 THE DEFENDANT: Yes.

6 THE COURT: If you guys want to stand up and sit
7 down because you're trying to get your steps in, go ahead.
8 If it's easier to stay seated, that's fine, too. I'm not
9 going to stand on ceremony about that.

10 There are numerous objections to the presentence
11 report. By my accounting, Mr. Sultan, I have read and taken
12 notice of objections one through nine and don't think there
13 needs to be anything further resolved or discussed. Is there
14 any one of those you would like me to dive into in more
15 depth?

16 MR. SULTAN: I'll just look for a second.

17 THE COURT: Do you want me to go through them one
18 at a time and tell you what they are if they're not in front
19 of you?

20 MR. SULTAN: No. I can see where they are. Only
21 to the extent one through nine, Your Honor, refer to the
22 facts underlying objection eleven, which is the four points
23 for leadership. If the Court wants to deal with that all at
24 once, there's no reason to consider the others individually.

25 THE COURT: Right. That's my intention, to deal

1 with ten which goes to the six point enhancement and then
2 eleven which goes to the role enhancement. And I think that
3 once we resolve those two, the others largely take care of
4 themselves.

5 MR. SULTAN: Agreed.

6 THE COURT: So with regards to number ten, which
7 goes to the six-level increase in the offense level based on
8 the assault on a law enforcement officer, I'm happy to hear
9 you on it, Mr. Sultan. But I think that that six points is
10 properly applied, and I am -- that objection is going to be
11 denied. To the extent that there's -- you want to make the
12 argument around this, I think it's more appropriately made in
13 your sentencing recommendation rather than in the guideline
14 calculation.

15 MR. SULTAN: That's fine, Your Honor. I just want
16 to make it clear to preserve that issue and that objection.

17 THE COURT: Yes.

18 MR. SULTAN: For the record.

19 THE COURT: Yes. So the six points will stay as
20 is. You also have an objection 11 to the four-level increase
21 for the role in the offense. After giving that some thought,
22 I'm happy to hear the government on this one. The
23 government's position is well-founded, and I take their point
24 about the other two individuals, Mr. Boddie and Mr. Noons.
25 But based on the evidence that I saw at trial, I am not

1 prepared to say that there were five other people involved in
2 the offense. So instead of applying the four-level
3 enhancement on role, I'm going to apply a two-level
4 enhancement on role. But if you want to be heard on that for
5 the record, Mr. Mallard or Mr. MacKinlay, this is your
6 opportunity.

7 MR. MALLARD: Your Honor, I would pass on that.
8 But I would just basically incorporate the arguments that I
9 made on pages 6 through 10 of my memorandum in support of
10 sentencing.

11 THE COURT: As I say, it's not a crazy position for
12 the government to take, but it seemed to me to be a very
13 close call. And when I feel like there's a close call like
14 that, it goes to the runner, which in this case is the
15 defendant. I think someone called it, it may have been
16 probation called it, a strong inference of the participation
17 of the other two. There is certainly an inference there, but
18 I wasn't convinced it was a strong enough to get over the
19 hurdle of preponderance of the evidence. But I do think he
20 satisfies the criteria for the two-point role enhancement,
21 and I am going to apply that.

22 So with regards to objection 12 which is
23 Mr. Sultan's calculation where he asked that it be a 25 and
24 not a 35, it's going to be a 33 rather than a 35. Thirteen I
25 don't think needs to be resolved. I've taken note of it.

1 Same with 14. Fifteen, 16 and 17 have been taken care of by
2 amendments to the report. And 18 again is the math total
3 where Mr. Sultan is objecting to the 35, and again that's to
4 a 33. So that is by my accounting a resolution of all the
5 objections.

6 Does anybody want to be heard or comment further on
7 any of those before we move on?

8 MR. MALLARD: No, Your Honor.

9 MR. SULTAN: No, Your Honor.

10 THE COURT: With those rulings in play, the
11 guideline calculation, I'm going to run through it, but it's
12 essentially the guideline calculation in the presentence
13 report minus two points based on my ruling for role. So
14 that's a 20-point base offense level. Two points for the
15 injury to the store manager, one point for loss, six points
16 on the victim enhancement, two points for role, two points
17 for obstruction which gets us to a 33.

18 Criminal history points are 10 which puts him in a
19 Criminal History Category five. That comes to a guideline
20 range of 210 to 262 months, a supervised release range goes
21 up to three years on Counts 1 and 2, five years on Count 3.
22 The fine range, I think, is \$35,000 to \$350,000. I don't
23 believe restitution is an issue, and the special assessment
24 would be \$300, which is \$100 on each count.

25 The government, Mr. Sultan, probation, do I have

1 that calculation correct?

2 MR. MALLARD: Your Honor, I believe you have the
3 guidelines correct with respect to the 33 and category 5.

4 THE COURT: Mr. Sultan?

5 MR. SULTAN: It's correct, Your Honor.

6 THE COURT: Got that right?

7 THE PROBATION OFFICER: Correct.

8 THE COURT: Excellent. Mr. Mallard or
9 Mr. MacKinlay, the government's recommendation, please.

10 MR. MALLARD: Your Honor, the government is
11 recommending the low end of the guidelines, and we do object
12 to essentially the Court's finding of the plus two versus the
13 plus four. We are recommending the low end. I think in this
14 case -- Obviously the memorandum was submitted with the
15 guidelines being higher at a 382 months, but we would be
16 recommending the low end of the guidelines as calculated by
17 the Court which is 330 months to 382 months as currently
18 stated by the Court's calculation.

19 THE COURT: Hold on. You're essentially
20 recommending 210 months which is the guideline range plus the
21 120 months on and after which gets you to 330?

22 MR. MALLARD: That's correct, Your Honor. Give me
23 one moment. I'm going to do the math on how many years that
24 is.

25 It's essentially 27 and a half years, Your Honor.

1 While the government's argument in the memorandum certainly
2 reflected the 31 number, we would be looking for 27 and a
3 half as currently calculated by the Court.

4 THE COURT: Okay.

5 MR. MALLARD: We also have Officer Robinson is here
6 to allocute, and I would like to read Mr. Dertelus' victim
7 impact statement into the record if possible.

8 THE COURT: I would formally let Mr. Sultan make
9 his recommendation and then circle back to the victims. But
10 Mr. Sultan, do you have any objection to doing the victims
11 now and then you make your recommendation?

12 MR. SULTAN: Of course not, Your Honor.

13 THE COURT: All right. Go ahead, Mr. Mallard.

14 MR. MALLARD: Your Honor, I would first read
15 Mr. Dertelus' statement. Just so the Court is clear and the
16 record is clear, Mr. Dertelus is the store clerk who was in
17 the store at the time of the robbery. He states as follows:

18 "The incident that had taken place on January 26,
19 2019, has impacted my life both personally and
20 professionally. I recently began to learn how to manage my
21 personal anxiety. The incident that took place at
22 approximately 7:11 p.m. continues to shock me because it is
23 something I would only watch happen to innocent people on TV.
24 This has now become my reality. I'm writing this statement
25 on September 3, 2020. It has now been a year and seven

1 months since this incident took place, yet it continues to
2 cross my mind bitterly every day. How could I let this
3 happen? I felt an overarching feeling of helplessness. The
4 area I was working was known for having crimes around the
5 area. This was one significant factor in deciding whether I
6 wanted to accept this promotion for work or not. I'm a calm,
7 laid back individual, and I am the type to help and to give
8 to others when I can. Since this took place, I have worked a
9 lot less closing shifts. I am seeking a remote opportunity
10 somewhere where I'd be moving around a lot. I would rather
11 work safely from my home.

12 "On days that I am closing, the incident would
13 continuously hover and constantly play in my mind. Not only
14 did this incident impact me, but it has impacted my close
15 friends and family. They worry about me daily, my mental
16 health, constantly checking in to see if I am all right. I
17 can wake up every day and wear this smile attempting to keep
18 a positive energy around others. I cannot get over how my
19 life could have been taken from me only because I woke up
20 that Saturday morning and decided to go to work.

21 "I continue to be very angry that this happened to
22 me. There's nothing I can do about that life altering
23 experience. I can only think positively for myself and
24 continue to strive to become a better person than I was the
25 day before. All the suspects in the incident should be held

1 accountable regardless of whether they were inside the store
2 or not. I've decided not to appear at today's sentencing
3 simply because this is something I will never forget, and I
4 want to put this behind me. I'm trying to move forward with
5 my life.

6 "I'm a person that holds everything in and finds my
7 own way in dealing with my issues. Like most people I wake
8 up and get ready to make my day better than my last. I go to
9 work and prepare for a better tomorrow, but it seems that
10 this incident has put a significant shadow of despair on me
11 mentally. I come from a background where I was taught the
12 importance of hard work and that it would always pay off
13 in the long term. Growing up my parents made sure our family
14 did not grow up around a violent neighborhood. They made
15 sure we received an education.

16 The examples are that at my age having leadership
17 positions, being a manager in a retail sales environment.
18 The average person may not take on their day as seriously as
19 I do. I'm always ready to tackle a new challenge and get
20 another achievement. I am always looking out for others, and
21 I always try my hardest in supporting people in the best way
22 I can.

23 "As for the defendant, all I can say is I hope you
24 do better with yourself, your future, and make something
25 positive with your life. I did not have any foresight of

1 what happened on that day, and unfortunately I cannot
2 forget."

3 THE COURT: And the officer is here as well?

4 MR. MALLARD: He is, Your Honor.

5 THE COURT: He's welcome to make his statement
6 also.

7 MR. MALLARD: From the witness stand?

8 THE COURT: Wherever he wants. That one is clean,
9 and that one is clean. So take your pick. Can you please
10 identify yourself for the record.

11 MR. ROBINSON: My name is Silverson Robinson. I'm
12 an officer at Brockton Police. Good morning. I've been a
13 police officer in Brockton for 22 years. I came to the U.S.
14 from Barbados. My family is here today. I was ten years
15 old. After a short period of time in Boston living we moved
16 to Brockton. After graduating from Brockton High, I served
17 four years in the Navy as an Electrician's Mate Third Class.
18 I was honorably discharged, proud of my service to this
19 country that took me in and my family.

20 "I started with the Brockton Police six years later
21 in '98. I've been married to my wife for 26 years. I have
22 four children, Your Honor. Three boys, one girl. My eldest
23 son is an electrical engineer. My second is an accountant.
24 He's going to be 27 at the end of the month. My second
25 oldest just turned 24. I have two other children. They're

1 both still in college. And what I do I do for them, I do for
2 you, and I do for the community. I work nights as a
3 patrolman for 21 years, never worked days but one year. My
4 wife and children have dealt with the difficulty of my hours
5 and stress of my job. I've been struck twice by vehicles.
6 I've even been jumped on, no apparent reason. I spent many
7 nights away from my family. I've dealt with difficult calls.
8 I've responded to many dead bodies, and I've helped victims
9 along the way in violent crimes. This is the first time I've
10 been shot at.

11 "On January 26, 2019, on the eve of my daughter's
12 birthday, I left home and went to work for my usual 4 to 12
13 shift. You left home, sir, with the intention of committing
14 a crime. Sometime during that night our paths crossed while
15 performing my duties and yours while engaged in criminal
16 activity. During the commission of your crime, I attempted
17 to stop you, but you decided that you would not let me or
18 anyone else stop you from getting away. That decision
19 resulting in shots being fired at me and the cruiser I was
20 operating.

21 "You obviously did not care if it had taken my life
22 or injured me in any way. Your only concern was getting away
23 from me and my fellow officers. You wanted to get away
24 without having to be held responsible for your foolishness
25 and criminal decision. The night after you were apprehended,

1 I continued working. The night after your friends were
2 apprehended, I continued working as usual until the end of my
3 shift thinking that I was fine. As we can see, I'm not fine.

4 "While driving home I started reflecting on
5 everything that had occurred. Just the thoughts made me
6 begin to shake like I am now. The reality of what had taken
7 place, what could have happened came into mind. The reality
8 that you were willing to kill me, an officer, to escape. The
9 next day while sitting in church, it was Saturday, Sunday
10 morning, the full impact of your reckless actions fully hit
11 home. I had to leave and go home because again I couldn't
12 stop shaking. I kept thinking over and over that you would
13 have taken my life without thought or hesitation. It would
14 never have bothered you one bit if any of those bullets had
15 entered the cruiser and into my body and ended my life.

16 "I started thinking and still up to this day think
17 of all that you would have robbed me and my family of. You
18 would have taken away my opportunity to grow old with my wife
19 and enjoy my retirement in my older years, the opportunity to
20 watch my children grow and accomplish their dreams, the
21 opportunity to see grandchildren to be born, and to be there
22 for my parents as they got older and needed assistance.

23 "One year, eight months later I am still affected
24 by your actions of that night. I become nervous when faced
25 with certain situations, and my anxiety level is much higher

1 than it ever was before. I am less trusting, more conscious
2 of where I am and what is going on around me, especially
3 while at work.

4 "Today I noticed there's cameras on the train.
5 Why? I don't know. I'm not going to stand here and pretend
6 to be big bad cop. My children will tell you that I'm not.
7 I give everybody a fair shake. January 27, 2019, I was
8 afraid, very afraid, the kind of fright that is hard to
9 describe. You endangered my life and could have taken it
10 along with all that matters to me, my loved ones. I have
11 come to terms and accepted what took place that night has
12 affected me. It will for a long time. But I will not let it
13 define the person that I am, and I will continue to persevere
14 and grow from it.

15 "I am here today to inform you I am still on the
16 job. I am still working to take people like you off the
17 streets. I will not let your actions deter me from my main
18 objective as a law enforcement officer to patrol the streets
19 of Brockton and protect innocent citizens from criminals like
20 you, criminals whose only objective is to get what they want
21 without regard for anyone or anything, but their own selfish
22 desires.

23 "Today I will leave here and return to my career.
24 I will leave here and go home with my loved ones, to continue
25 to celebrate more birthdays. My daughters and my son and I

1 will spend time and celebrate life and those that I care
2 about and care about me. I will continue my life. You, on
3 the other hand, will not have the opportunity to return home
4 and you will not be able to return to your loved ones.

5 "I say this, Your Honor, I know what I signed up
6 for. I'd do it again. But we must make a decision on what's
7 going to happen today. I thank you for listening to me. And
8 I thank the U.S. Attorney's Office. Thank you."

9 THE COURT: Thank you, Officer Robinson. I know
10 those victim impact statements are not an easy thing to do.
11 Mr. Sultan, your recommendation, please.

12 MR. SULTAN: Thank you, Your Honor. I'll do my
13 best to speak through the mask. I will take Your Honor's
14 offer on remaining seated if that's okay.

15 Your Honor, based on the sentencing memoranda
16 submitted last Friday, this is the biggest disparity in
17 sentencing recommendations I've ever encountered in 40 years
18 of practicing law in this court. And I acknowledge that the
19 government today has reduced its recommendation from 32 years
20 to 27 and a half years. But I don't think -- I don't think
21 that really changes the thrust of the comments I'm about to
22 make.

23 Many years ago I clerked for a federal judge who
24 told me that sentencing is the hardest part of the job. Such
25 a grave decision, such an exercise of power over another

1 human being to take away a person's liberty and decide as a
2 matter of judicial discretion how long that individual will
3 be locked up in a cell, deprived of his family, his friends,
4 fresh air, a glimpse of the sky and all of the other
5 pleasures of life large and small that we take for granted.

6 I certainly don't suggest that sentencing Giovani
7 Carter will be an easy decision for Your Honor in this case,
8 but it's such an important decision. Now, with respect to
9 the offense conduct, Your Honor, I'm not going to belabor
10 that because Your Honor presided over the trial.

11 I do want to acknowledge that, as is quite obvious,
12 this was not a victimless crime. Both Officer Robinson and
13 Gary Dertelus were both doing their jobs. They were both
14 severely traumatized by what happened. No one should have to
15 go through that. And Mr. Carter must be held jointly
16 responsible for what happened and for the consequences of
17 those actions. Fortunately, no one was seriously hurt, but
18 that doesn't change the fact that this was a serious crime.

19 Your Honor has done the guideline calculation, and
20 I'm not going to talk about that anymore other than to note
21 the guideline calculation including the consecutive 924(c)
22 sentence on its face involves double counting or even triple
23 counting because the defendant is getting multiple points
24 added for what amounts to the same action of shots being
25 fired during the flight. And while that may be perfectly

1 appropriate and lawful under current legal precedent, what it
2 means is that the guideline calculation ends up overstating
3 the seriousness of the offense. And beyond that, Your Honor,
4 the case *Dean*, the Supreme Court's case in *Dean*, which I
5 cited in my memo, it's a very important case, Your Honor.
6 And that case says very clearly that a sentencing court faced
7 with substantive underlying crimes plus a 924(c) count should
8 take the mandatory minimum piece into account in deciding how
9 much more incremental punishment is necessary in order to
10 come up with an overall sentence which is sufficient but no
11 greater than necessary.

12 This was Chief Justice Roberts' decision. He gave
13 an example which really struck me. He said in that case
14 there was actually a 30-year mandatory minimum, I think,
15 under 924(c), and he said there's nothing that prevents a
16 judge from imposing a 30-year mandatory minimum under 924(c)
17 and a 30-day sentence, I think he said, for the underlying
18 offenses as long as they are imposed consecutively.

19 So the fact that there is a mandatory minimum and
20 the fact that it has to be imposed consecutively does not
21 mean that there is a ten-year bump. It doesn't mean that you
22 figure out how much time is necessary for Mr. Carter to serve
23 for his Hobbs Act violations and then just add another ten
24 years.

25 *Dean* says that's not what the Court should do.

1 Yes, the Court has to obviously in this case impose the
2 ten-year mandatory minimum. But the issue remains what is
3 the overall amount of time that is sufficient but not greater
4 than necessary in order to punish Mr. Carter for his crimes.

5 THE COURT: Can I interrupt you, Mr. Sultan? I
6 don't totally understand your double counting argument or
7 your triple counting argument. He gets two points for what
8 happens in the store, right?

9 MR. SULTAN: I'm not talking about that, Your
10 Honor. Yeah.

11 THE COURT: There's definitely the 924(c) on the
12 shots being fired. But where else are you thinking that's
13 being double counted?

14 MR. SULTAN: He gets the 924(c) for the shots being
15 fired. He gets six additional points because the shots were
16 fired at a law enforcement officer, and he gets two
17 additional points because reckless conduct during the flight
18 endangered other people.

19 So I understand that technically the way the
20 guidelines are interpreted today, those just all get added on
21 and that's all fine. But as a practical matter, he is
22 being -- it's kind of a piling on, Your Honor, and he is
23 being hit repeatedly for really the same exact offense
24 conduct, which is other accomplices firing shots during the
25 flight. I'm not making a legal argument. I'm making an

1 equitable argument.

2 THE COURT: I just want to really understand what
3 you're saying. The chase could be the reckless conduct,
4 right, irrespective of the shots being fired?

5 MR. SULTAN: It could be parsed that way, Your
6 Honor. The mere fact that the car was driving, whatever, 70
7 miles an hour within city limits, sure, I understand. It can
8 be parsed that way. But in reality basically for the flight,
9 for what happened during the flight he's being given eight
10 points on the guideline calculation plus ten years. And
11 that's an awfully heavy hit, and I submit that overstates the
12 overall seriousness of the offense.

13 That's in essence the argument. But I think the
14 Dean argument, Your Honor, is that you can't just figure out
15 the proper sentence for the robbery conduct and then just add
16 ten. Dean says that's not the way to do it. That's exactly
17 what probation did, and that's exactly what the government is
18 urging the Court to do. And I would urge the Court to follow
19 Dean and reject that incremental approach for the more
20 wholistic approach that the First Circuit has adopted really
21 almost since *Kimbrough* but certainly over the past decade.

22 Your Honor, with respect to Mr. Carter's background
23 and character, let me just speak about that for a few
24 minutes, if I may. As the Court now knows, Mr. Carter
25 experienced a terribly abusive childhood. He was beaten

1 regularly by his mentally ill, drug addicted mother. She
2 tasered him. She struck him with objects. She neglected
3 him. Imagine the impact of that betrayal on a young child.
4 That was his upbringing.

5 Nevertheless, to Mr. Carter's credit, he has
6 developed into a caring and involved parent to his own
7 children. And I know the Court has read the letters. The
8 letter of Shaatrona Sims, his fiancé, the letter of his
9 grandmother, Nancy Carter, and the other letters which I
10 think attest to those qualities.

11 So he's now 30 years old. He's an intelligent and
12 articulate and a sensitive man. He has many years left.
13 He's far from a lost cause. Whether he will spend most of
14 the rest of his life in prison for this offense is really up
15 to you. And I submit that he should not.

16 Now, let me talk about two particular guideposts
17 that have sort of been used throughout the years with respect
18 to sentencing. And those guideposts are proportionality on
19 the one hand and avoiding unwarranted disparity on the other.

20 Let me first talk about proportionality. The
21 government refers to Mr. Carter as a "top tier violent
22 offender" suggesting that he, therefore, must be sent to
23 prison now for 27 and a half years. That characterization
24 just brought to my mind memories of a lot of other cases in
25 this courthouse that I'm familiar with. Going way back to a

1 case I worked on back in the 1980's, the Angiulo case, where
2 the leaders of the Boston mafia, who had led the Boston mafia
3 for decades were tried before Judge Nelson. RICO case,
4 numerous predicate murder offenses, Judge Nelson described it
5 as "the most serious case I've ever sat on".

6 In 1986 at the end of that lengthy trial, Francesco
7 Angiulo received a sentence of 25 years. Donato Angiulo
8 received a sentence of 20 years. Sammy Greenough received a
9 sentence of 20 years. Those people were top tier violent
10 offenders.

11 And think of another case, more recent case, John
12 Martorano, who admitted to being a hit man for the mafia and
13 murdering 20 people. He became a government witness. He was
14 sentenced in 2004 to 14 years. He was a top tier violent
15 offender.

16 I think that the Court should consider other recent
17 cases in this courthouse, different kinds of cases, serious
18 cases involving rich, white defendants who have had
19 opportunities in life that Mr. Carter could only dream of
20 when he was being beaten and tasered by his own mother.

21 Consider, for example, a case Your Honor knows
22 well, the Insys case. The longest sentence meted out after
23 that lengthy trial, I believe, was 66 months. How many
24 thousands of Americans died as a result of the criminal
25 offenses committed by the defendants in that case? Consider

1 the Varsity Blues case. Dozens of wealthy privileged parents
2 who bribed and cheated their children's way into elite
3 universities. The sentences meted out in those cases ranged
4 from probation up to I believe a maximum of nine months in
5 prison.

6 Now, I understand no guns were discharged. No one
7 was struck in the head. But as Woody Guthrie once wrote, and
8 speaking about the bank robber Pretty Boy Floyd, "Some will
9 rob you with a six gun and some with a fountain pen."

10 27 and a half years for Diiovanni Carter, where is
11 the proportionality in there?

12 The other principle I want to talk about, Your
13 Honor, is the principle of avoiding unwarranted disparities.
14 So what I did and submitted to the Court on that issue, which
15 was illuminating to me was I provided to the Court as an
16 exhibit to the sentencing memo a table of the 77 sentences
17 meted out for robbery in this district over the past decade.
18 I tried to get them all. I may have missed one or two, but I
19 Was not cherry-picking. I'll tell the Court that.

20 In two-thirds of those cases, the sentencing judges
21 downwardly varied from the guideline sentencing range. And
22 not a single one of those 77 sentences, Your Honor, was
23 longer than 272 months. Out of 77 cases. I understand every
24 case is different. But does Diiovanni Carter really deserve
25 five more years in prison than every one of those other

1 robbery defendants in this courthouse over the past ten
2 years? What the government is asking for is grossly
3 disproportionate. It's way beyond the pale. It's out of
4 line.

5 And finally, Your Honor, I need to talk about the
6 proposed plea agreement in this case, which is something I
7 ordinarily would not bring up after trial. But I have to
8 bring it up. I understand that Mr. Carter decided not to
9 sign that agreement. And instead he exercised his
10 constitutional right to go to trial. And I understand the
11 government, of course, is not bound by that unsigned
12 agreement and is free to advocate for any sentence it wants.
13 But there is something going on here which is truly
14 disturbing and wrong.

15 Just before trial the government was prepared to
16 characterize 8 to 14 years as a reasonable and appropriate
17 sentence for Giovani Carter in this case, 8 to 14 years.
18 Now it says that a 27 and a half year sentence is necessary
19 and appropriate for the very same offense conduct by the very
20 same defendant. So what changed? It's obvious. Mr. Carter
21 is being penalized by the government for going to trial, big
22 time.

23 But, Your Honor, the criminal justice system isn't
24 a game. It's not a hand of poker. The stakes are enormous
25 and life altering. One of the factors in the sentencing

1 statute is general deterrence. Well, think about general
2 deterrence and what the government is doing here. The effect
3 of jettisoning up their sentencing recommendation from what
4 they would have prepared before trial, so what they are
5 recommending now is quite clear. It's to deter others from
6 going to trial. It delivers that message loud and clear. If
7 you go to trial and get convicted, you're going to get
8 smoked.

9 That is a perverse message. It's a message that
10 undermines criminal defendants' constitutional rights, the
11 right to go to trial. It's only a small step from a system
12 where the government tortures people until they confess.
13 We're talking about -- we're not talking acceptance of
14 responsibility, Your Honor. I understand there's a
15 difference. But what they're doing here is doubling or
16 tripling what they claim is a fair and appropriate sentence
17 simply because Mr. Carter went to trial. And that's wrong.

18 In conclusion, Your Honor, sadly, there's nothing
19 particularly unusual about this case. A young black man who
20 suffered an abusive upbringing and a lousy childhood, started
21 committing crimes at age 15 and now comes before the Court
22 for sentencing for his participation in an armed robbery,
23 like dozens of others with similar backgrounds who are
24 sentenced in this courthouse every year for drug crimes, gun
25 crimes, robberies, and the like. It's really sad for them,

1 for their families, for the community, for all of us.

2 I've been doing this work for a long time, Your
3 Honor, and sometimes it just feels so hopeless, like such a
4 waste, like we're all just cogs in a vast machine that grinds
5 people to bits. A system where young black males are locked
6 in elite prisons for decades until the very light of their
7 humanity is snuffed out.

8 Yes, Diiovanni Carter rejected that reasonable and
9 appropriate 8 to 14 year plea and exercised his right to go
10 to trial. Yes, he lost. But he shouldn't lose everything as
11 a result. His life matters, too. These are just words. But
12 Your Honor gets to decide through your sentencing decision
13 what they mean. You don't have to sentence Diiovanni Carter
14 to 27 and a half years in prison. You shouldn't do it.

15 I urge you to adopt a 12-year recommendation we
16 have submitted to the Court, a reasonable and appropriate
17 sentence, which will afford Mr. Carter an opportunity to
18 rejoin his family and his community after he spends more than
19 a decade in prison to pay for his crimes. I urge the Court
20 to recommend that he be designated to a facility as close as
21 possible to Massachusetts so he can maintain a relationship
22 with his children and his family; that he be recommended for
23 RDAP entry; and that he receive credit, Your Honor, since
24 March 5, 2019, which was the date he was originally taken
25 into state custody for these very same offenses. I thank the

1 Court for listening.

2 THE COURT: He's been in federal custody since
3 April 19, correct?

4 MR. SULTAN: That's correct, Your Honor. He was
5 originally arrested by state authorities on state charges and
6 the state charges were nolle prossed and the federal case
7 went forward.

8 MR. MALLARD: I'd like to respond and also make my
9 argument in support of sentencing as well.

10 THE COURT: You should have already done that. Let
11 me just ask you, Mr. Mallard. It seems that month between
12 March and April, that has been time that he's gotten no
13 credit for.

14 MR. MALLARD: I agree he gets all credit since
15 March 5.

16 THE COURT: March 5 or March 15? What did you say,
17 Mr. Sultan?

18 MR. SULTAN: March 5.

19 MR. MALLARD: Your Honor, I'll start where the
20 defendant ended, which is that there is nothing unusual about
21 this case. I have a different perspective on that and the
22 facts and the history in this case for other cases and the
23 facts for this case that that's simply not true. There are
24 76 cases in the defendant's chart. He counts the Laperle
25 case twice. Of those 76 cases there are only three trials.

1 There are 73 guilty pleas, 11 pleas to information. Of the
2 three trials, all of those sentences in Brown, Rachal, and
3 the other case is Patterson, the Court imposed a low end
4 guideline sentence. And not a single one of those trials
5 involved a shooting.

6 In fact, of all the cases that are in that chart,
7 most of them are not jobs in banks. Most of them don't
8 involve firearms. And all but one do not involve a firearm
9 being fired. There's only one case where the firearm was
10 shot. That's United States versus Hamilton. That's a case
11 before Judge Zobel where she imposed a 168 month sentence on
12 a plea with a defendant who did not shoot at the police.

13 In fact, the facts of that case are that the
14 defendant in Hamilton was trapped in a vestibule that locked
15 and was sort of a man trap. And the defendant in that case
16 fired his gun to get out of that trap and he had the ten year
17 from and after.

18 Looking at the history in this court, this
19 defendant is in a category unto himself in terms of what he
20 did in this case. In terms of leadership, what the facts are
21 in terms of shooting at the police, the facts in terms of the
22 victim being pistol whipped, and this defendant having a
23 category five criminal history. There's only one other case
24 that I'm aware of in this court where the defendant shot at
25 the police during the course of a robbery, and that's United

1 States v. Rosado, which is before Judge Sorokin for
2 sentencing next week. Even that case the defendant in there
3 is completely distinct and the facts are completely separate
4 from this. In Rosado there's one man, a bank robbery, and
5 firing upon an officer who confronted him while he's leaving
6 the bank. By comparison, this defendant engaged in a lengthy
7 chase. In his attempt to evade the police, he specifically
8 and intentionally ratcheted up the violence towards the
9 police. It was a calculated decision. Even in that case,
10 which is a plea, the low end of the guideline is 262 months.

11 The next thing I would like to talk about with
12 respect to the defendant's memorandum and also what he argued
13 is the nature of the plea offer. And I don't want to get too
14 much into it because it's irrelevant. First, there's no
15 aspect of the factors that would entitle this Court to look
16 at what the government has purposely offered any more than
17 the Court is entitled to look at what the defendant
18 previously offered to plead to in terms of a number. If he
19 had offered to plead to a greater sentence, the Court
20 couldn't consider that either. It's immaterial and
21 irrelevant to the Court's duties today.

22 Second, it should be excluded under Federal Rule of
23 Evidence 408. There's a line of cases -- United States v.
24 Verdoorn, 520 F.2d 193 under the Eighth Circuit; United
25 States v. Alexander, 679 F.3d 721 out of the Eighth Circuit;

1 United States v. Jason, 612 F.3d 471 out of the Sixth
2 Circuit; the United States v. Christianson, Arizona 2016
3 Westlaw 1753600 at asterisk three. The Court should not
4 consider prior plea offers in this context.

5 And in any event, Your Honor, if the Court happens
6 to glance upon the plea agreement and what the offer was, the
7 numbers there reflect a completely different set of operative
8 facts. Not the same facts, same offense conduct that was
9 offered. And he knows that because we had these negotiations
10 and discussions. That plea agreement differs from what the
11 guidelines are in this Court by the simple fact that he's not
12 being -- in the agreement he's not held accountable for
13 leadership, and he's also not held accountable for ordering
14 the gun fire at the police. Those facts have demonstrably
15 changed.

16 The fact that the government was willing to be
17 reasonable and give him the opportunity to accept
18 responsibility to a set of facts that did not come in some
19 respect exclusively from the CW who testified with respect to
20 ordering the gun fire, and the leadership was proven
21 independently through documents, was largely predicated upon
22 the cooperator's testimony. He was given the opportunity to
23 plead to a set of facts that reflected that limited universe,
24 and that changes the guidelines. And it also was an
25 opportunity to plead to a mandatory minimum that was not the

1 ten.

2 So in this context, Your Honor, the seriousness was
3 reflected in the agreement. We were looking for 14 years.
4 The guidelines now without acceptance of responsibility and
5 with the plus ten from and after, they're essentially in
6 line. It would have been a 24 with the plus ten under that
7 calculation with acceptance. But now he receives no
8 acceptance and plus two for leadership, the swing of five and
9 then five years from and after added to the five that he
10 would have faced.

11 I'd also like to just briefly mention the double
12 counting. There are two incidents involving the firearms.
13 First, in the store with the gun being brandished and
14 Mr. Dertelus being struck; and then the second incident where
15 the gun fire happened. He receives no increase in the
16 guidelines, I believe it's under (b)2, for use of the firearm
17 even though he used them in two separate occasions.

18 He doesn't receive two 924(c)'s, although the facts
19 support it. Because that would be 924(c) stacking, and that
20 is no longer permissible under the law. To say he's being
21 double counted, in fact, it's exactly the opposite. He's
22 receiving the benefit of a combined 924(c) for arguably two
23 separate instances that would qualify on their own. The
24 924(c), even if the guns were never produced during the
25 robbery, would have been satisfied by the shooting. If there

1 was no shooting, the brandishing, which was a seven, would
2 have been satisfied by the robbery in the store by itself. I
3 just don't understand what counsel is getting at because
4 there is, in fact, no addition for the guideline.

5 I'd like to return back to my regular argument for
6 sentencing, Your Honor. I'll just note with respect to the
7 victim impact statements, Mr. Dertelus was 22 at the time of
8 his testimony. He was 21 at the time of the incident. He
9 was already the store manager. He references hard work and
10 his dedication to making something of himself. He's a young
11 man.

12 While in comparison, Officer Robinson is looking
13 towards retirement. Both are hard working and serious
14 individuals who take their jobs seriously. They were both
15 met because of their hard work and diligence with gun play.
16 Mr. Dertelus being struck, Officer Robinson being fired at.

17 What I want to just emphasize for the Court as the
18 Court listens to Mr. Robinson's statement is he represents
19 what's the best in law enforcement. He was fired upon
20 multiple times in the heat of an incredibly difficult and
21 stressful situation, chasing the suspects down. And as those
22 doors flew open, the testimony was vivid, live, clear at this
23 point he expected a gun fight. But he did not fire his gun
24 afterwards. There was no additional fire from the Brockton
25 Police at all that night.

1 They pursued these defendants, chased them down in
2 the woods knowing that these defendants had already fired at
3 them. And the level of restraint that they displayed that
4 night represents the best of what law enforcement can be.
5 The restraint, the professionalism, and I would submit to
6 this Court the bravery and courage of Officer Robinson to get
7 out of that car, chase them down, one man against four,
8 knowing that they're willing to shoot, they're willing to
9 fire, and they just did.

10 Nature and planning and circumstances of this case
11 also merit the Court's attention. There were multiple trips
12 to Brockton even just that day Googling the location,
13 planning this out, preparation including other men. The
14 Court heard direct testimony about recruitment, meeting up,
15 gathering of firearms. And the men who were not just
16 willy-nilly there. They had masks, gloves, they were
17 readying to. They had a bag to carry the stolen goods in,
18 and the firearms were loaded.

19 The execution of the plan was focused and
20 disciplined. They drove directly there from Boston. They
21 parked on a side street. They couldn't see the car and the
22 quick escape into Brockton after the robbery demonstrated
23 exactly the type of crime that this is. All in all, this was
24 an extremely vicious robbery by multiple people coordinated
25 by one individual, Giovani Carter. The danger to the police

1 and community can't be overstated as well, Your Honor. There
2 was a high speed chase in residential streets at night. The
3 Court has the street view images of the tightness of those
4 streets, extremely dense residential area. It captures every
5 turn, acceleration, twist, every braking and speeding up,
6 every turn onto major roads. A witness that the Court heard
7 was at the dinner table on Summer Street with his family when
8 he heard the gunfire outside his house. That was the moment
9 when the defendant was ordering the shooting.

10 He wanted the police to be in a position where they
11 wouldn't -- where the police wouldn't continue the chase, so
12 they'd stop and the defendant could get away. And while no
13 one was hit in terms of the police that night, there was a
14 gun shot victim. His own brother was struck. Nothing about
15 this crime was out of desperation or fear. This wasn't a
16 situation where there was extensive drug addiction or some
17 sort of bender that was being --

18 This robbery wasn't to get money for drugs. This
19 wasn't money to pay rent or some other sort of desperate
20 means or nature. This was extremely well planned. He had a
21 reasonable car, multiple firearms, a cell phone that he was
22 using extensively, Google account, to plan and prepare. And
23 that fact alone also distinguishes this from essentially all
24 of the robbery cases referenced by the defendant which are
25 largely borne under substance abuse and problems in that

1 respect.

2 This defendant's criminal history and the past
3 cases that are clear on his record indicates that this was
4 not his first experience with violence and robbery and guns.
5 He knew his way around firearms. His past convictions and
6 even the arrests indicate he knows what they are. In fact,
7 his Google search history had an extensive amount of gun
8 searches. We had to exclude a lot of that Google search
9 history because he was so interested in guns, it would have
10 prejudiced the jury.

11 So to say it's not unusual, in fact, it really is.
12 He was an enthusiast. He was enthusiastic about firearms.
13 He was enthusiastic about his brother firing his firearm at
14 Officer Robinson from the car as he said in the trial, and
15 the trial testimony supported it, "Yeah, D, yeah, D", as his
16 brother fired those shots.

17 There's one argument that the defendant can't make
18 here, and that is this case is some sort of anomaly for the
19 defendant or not reflective of his character. The criminal
20 history again tells that story. In the past 15 years the
21 defendant has been convicted of robbery, theft, firearms
22 offenses, drug offenses, shootings, and even an arrest for
23 murder. That's who this defendant is.

24 For a lesser defendant who was not top tier, these
25 brushes with the law would have had a chastening effect,

1 especially those that don't result in conviction. Here they
2 didn't. At some point all these different brushes and
3 experiences reveal an insight into the character of the
4 defendant and who he is. The insight is really simple. He
5 will continue to do this.

6 I'd like to say this crime is the pinnacle of his
7 criminal career, but it's not. He's been accused of greater
8 crimes in courtrooms. And yet here we are. After being
9 arrested for murder and avoiding it, I'm not saying he's
10 responsible for that murder. It's simply not a conviction.
11 It doesn't matter. But he sat in a courtroom with life
12 without parole on the horizon, a prospect of that and he
13 emerged clean. He beat that case. Now that was five years
14 ago. Since then the criminal cases have only continued.

15 In fact, he seems emboldened given the number of
16 serious cases that have happened since then over the past
17 four years. The defendant in this case left his own brother
18 behind bleeding in the woods on a below freezing night
19 wearing sweat pants and a sweat shirt. He's chosen not just
20 crime but violent crime and firearms time and time again.
21 Just another instance where the defendant's enthusiasm for
22 violence is clear, not just obvious from the case but also
23 from the evidence.

24 Specific deterrence is also something the Court
25 should consider, and it's a difficult concept. And I think

1 it's going to be extremely difficult for this Court to look
2 at anything else except an extremely long sentence to satisfy
3 specific deterrence considering the fact that the defendant
4 has already faced extensively serious charges, beat them and
5 here we are.

6 If you can face that on the horizon and prevail and
7 still find yourself here for this crime, I'm not sure the
8 threat of prosecution or lengthy sentencing will ever cause
9 him to conform himself to the law. As a result, specific
10 deterrence in this case needs to be delivered in the form of
11 direct and experienced incarceration. Probation supervised
12 release hanging over his head, these things clearly mean
13 nothing to him and will mean nothing going forward.

14 He will continue to commit crimes and expects to
15 face little to no punishment as he has in the past. General
16 deterrence should also be of significant concern to this
17 Court. Shooting at the police because they are the police in
18 order to effect escape is at the peak of dangerousness. It
19 borders on the edge of targeting law enforcement and to some
20 respect the system itself. To target officers that you know
21 are armed and necessarily must subdue an armed assailant
22 loose in the community, it merely reveals the boldness of
23 this defendant.

24 The sentence that you should impose should be
25 mindful of the message sent. The government urges the Court

1 to err on the side of deterrence. I'm asking the Court to
2 impose the low end of the guidelines here. 27 and a half
3 years is a significant sentence. The government acknowledges
4 that. This defendant has earned it, earned it through his
5 criminal history, past, his convictions, what he's done since
6 then, and what he did on that night. The Court should impose
7 the low end of the guidelines in this case and impose a
8 sentence of 27 and a half years.

9 THE COURT: Mr. Sultan, do you want to be heard
10 again?

11 MR. SULTAN: I'll be brief, Your Honor. I just
12 want to make two points if I may. Thank you. First, I
13 understand why the government doesn't want to talk about the
14 proposed plea agreement and wants Your Honor to ignore it.
15 As I understand it, the rules of evidence don't apply to
16 sentencing hearings. The facts did not change. All that
17 changed is that the defendant exercised his right to go to
18 trial. That's the only thing that changed.

19 Second point, Your Honor, Mr. Mallard just told the
20 Court he will do this again. He doesn't know that any more
21 than I know that he won't do this again. Nobody knows that.
22 But if he's forced to spend more than 4,000 days in prison,
23 hopefully that will persuade him. When he's in his 40s, when
24 he gets out to go down a different road. That's really all
25 that the system can hope for, and we can hope for, unless

1 he's just going to be locked up for the rest of his life and
2 the government is coming basically as close as they can to
3 trying to do that.

4 So I would urge the Court to ignore that prediction
5 from the prosecution, which is really baseless. Thank you,
6 Your Honor.

7 THE COURT: Mr. Carter, you have an opportunity to
8 address me before I impose sentence if you want to.

9 THE DEFENDANT: Good morning to everybody. Good
10 morning, Your Honor. The matter that gets us here today, you
11 and every individual here including myself [indiscernible]
12 encounter problems. At times we feel overwhelmed, and we
13 feel all is failed. One thing I can say is all the
14 situations are not made to be great. When you face that
15 uncomfortable circumstance, it makes you take a step back and
16 self reflect and it shapes you into the person you're going
17 to be moving forward.

18 What each individual faces outside [indiscernible].
19 In my mind regards with how much I used to worry about if I
20 was going to die on the streets or not. My parents were
21 absent the majority of my life. I lived carelessly. I
22 eventually thought the world was against me. Being forced to
23 grow up young and fast. I carried a lot of my childhood
24 through my troubles. I was living on my own, sleeping in
25 hallways, jumping house to house. One failed attempt after

1 another. I was struggling to figure out how I was going to
2 eat every day, put clothes on my back. People in the streets
3 accepted me for who I was and not who I was trying to be, so
4 I believed that they loved me.

5 I pushed a lot of people out of my life not
6 communicating with them for long periods of time. But in the
7 back of my mind I thought my mother and my father would
8 rescue me like super heroes and take away the pain and
9 suffering. Because without them I wouldn't be here right now
10 despite all of the failed attempts that my grandparents tried
11 to make.

12 It's because of my parents, being now that I'm
13 getting older and I've got a family of my own, I've done
14 everything in my power to assure them that they are loved and
15 well taken care of and not blind about false appearance.
16 They restored in me what family and love is. Listening and
17 communicating has been key dealing with them. It's one of
18 the most valuable things in the world.

19 I don't know how to do everything right. I do a
20 lot of things that ain't right. I know I do, Your Honor.
21 I'm like everyone else though. I'm not better than anyone
22 else. I'm just a human being just like you. I truly feel
23 that this is a blessing in disguise so I can move forward.
24 The journey has already begun, and I'm taking it and will
25 continue to take steps to better myself because if I fail, my

1 family is going to fail, too. It has to start with me. Hard
2 work doesn't happen overnight. It will pay off in the long
3 term.

4 I appreciate all the love and support I've got from
5 family and friends up to this point. It means a lot. I
6 would like to thank my attorneys for the hard work and
7 support as well. Thank you.

8 THE COURT: All right. I think you all know what
9 my job is here. I need to consider and I have considered
10 what a reasonable sentence would be in this case. In coming
11 to that decision I considered the advisory guideline
12 sentencing range, the nature and circumstances of the crime,
13 Mr. Carter's personal and criminal history and
14 characteristics, as well as the need for the sentence to
15 reflect the seriousness of the offense, promote respect for
16 the law, just punishment, adequate and general and specific
17 deterrence and to avoid unwanted sentencing disparities as
18 well as all the other factors set forth in 18 U.S.C. 3553(a).

19 I want to respond to some things that both sides
20 have said. Mr. Sultan, as always you have done an incredibly
21 energetic and thorough job for your client, and I think
22 everybody in this room recognizes that you've done excellent
23 work in this case. That being said, I have to disagree with
24 some of the things that you said.

25 The situation here is sad. It's sad for a lot of

1 reasons. But this is not happening to Mr. Carter because he
2 is a young black male. And although I need to concern myself
3 with Mr. Carter and what the rest of his life is going to
4 look like and what his family's life is going to look like, I
5 also need to consider and take into account all of the other
6 young black people that are out in the community trying to
7 make lives for themselves and are doing it in the shadow of
8 gun fire where they live.

9 No kid should have to worry about that, be them
10 black, white, or any other color. I understand that Black
11 Lives Matter is a cause celeb right now, and I fully embrace
12 that. But I am also not going to be put in a position where
13 I need to do things because people are young black males. I
14 don't love the pressure coming in that direction. I think
15 that there's no question that Mr. Carter has had a difficult
16 life, and he talks now about self-reflection. But there have
17 been many many opportunities for self-reflection along the
18 way that he has not taken advantage of.

19 When I think about a sentence for him, it's clearly
20 going to be a long sentence and a well-earned sentence here.
21 But I feel pain for his grandmother, who I assume is sitting
22 back there, and his fiancé and his children who are the real
23 losers in this. That is on my mind. But it should have been
24 on Mr. Carter's mind a lot sooner than it was. And he knew
25 that he had kids and he had a family and that their futures

1 in many ways rode on his back, and he still nonetheless chose
2 to go out and plan and execute that robbery.

3 Mr. Sultan, you said that the government is doing
4 the best they can to put Mr. Carter in jail for the rest of
5 his life. You said their recommendation is disproportionate
6 and out of line. I'd like to say if they wanted to put him
7 in jail for the rest of his life they could have recommended
8 the top of the guideline range instead of the bottom.

9 I think it is difficult to argue that their
10 recommendation is disproportionate and/or out of line when
11 it's right in line with the guidelines that are imposed in
12 this country.

13 And lastly -- I have two more things I want to say.
14 Second to lastly, in terms of the plea agreement, there are a
15 lot of good reasons for this Court not to consider a plea
16 agreement, but I do feel that one aspect of it needs to be
17 commented on. I was a prosecutor for a long time, and I was
18 a criminal defense attorney for a long time, and I've seen
19 both sides of this.

20 And I don't think it's fair to the government to
21 characterize a different recommendation in a plea agreement
22 as punishment for going to trial. Particularly with someone
23 like Mr. Carter where the evidence against him was likely the
24 weakest of all the co-defendants because he was the one that
25 did not go into the store and wasn't on videotape.

1 So rather than being punishment for going to trial,
2 I think a better characterization is that they were taking
3 into account litigation risk. All of that being said, the
4 sentence that they're asking for is a long one. I listened
5 to what Mr. Carter said, and I do think that there is a
6 measure of self-reflection in what he said. I also think
7 there was a lot of self-reflection in the two victim impact
8 statements. And I think those two men, Officer Robinson and
9 Mr. Dertelus were very courageous to come forward and give
10 the sorts of personal statements that they did. And I need
11 to take that into account as well.

12 So Mr. Sultan, all of that being said, I hear you
13 on your arguments. I don't think that there is inappropriate
14 double counting. If there was anything that could be
15 characterized as double counting, it would be the obstruction
16 and the six level enhancement. And my sentence will reflect
17 the fact that those two largely or somewhat overlap. The
18 government is not inappropriate nor is probation having
19 counted them separately.

20 I don't need to discount the sentence for that, but
21 I am talk taking it into account. I also want to impose a
22 sentence, Mr. Carter, that gives you some hope for the
23 future. There's no question it's going to be a long
24 sentence, but I want you to think about how you can improve
25 yourself and how you can be there for your kids and the rest

1 of your family. I am going to sentence you to less than your
2 attorney wants. Which I should also add, Mr. Sultan, it
3 seems to me that you're asking for a lower sentence than he
4 would have gotten in the plea agreement. Right? The plea
5 agreement was --

6 MR. SULTAN: 8 to 14.

7 THE COURT: 8 to 14 and you're asking for 12 now.

8 MR. SULTAN: Yes.

9 THE COURT: You're asking for a lower sentence. As
10 I said, I don't believe that the government is punishing him
11 for going to trial, but I'm certainly not going to give him
12 the benefit of acceptance of responsibility after. He is not
13 going to get -- I think your recommendation is thoughtful but
14 too low.

15 So this is what I'm going to do: Pursuant to the
16 Sentencing Reform Act of 1984 and having considered the
17 sentencing factors enumerated at 18 U.S.C. 3553(a), it is the
18 judgment of the Court that the defendant, Giovani Carter, is
19 hereby committed to the custody of the Bureau of Prisons to
20 be imprisoned for a term of 270 months. That term consists
21 of 150 months on Counts 1 and 2 to run concurrently and 120
22 months on Count 3 to be served consecutively. That's 150
23 plus 120 which is 270.

24 I am going to make a judicial recommendation that
25 the defendant attend vocational training, so that he can

1 enter the work force upon release. I am going to recommend
2 he participate in the Bureau of Prisons RDAP program due to a
3 substance abuse history and based on the informal
4 prescreening that was performed by probation.

5 And I will recommend if he completes the RDAP
6 program he be considered for the Bureau of Prisons
7 Alternative Community Placement Program which will allow him
8 to transition to a treatment setting as an alternative to a
9 residential re-entry program. I will also make a judicial
10 recommendation that he participate in the probation office's
11 CARE program during the term of supervised release if he's
12 deemed to be an appropriate candidate.

13 Upon release from prison he'll be placed on
14 supervised release for a term of five years. That is three
15 years on Counts 1 and 2, five years on Count 3, to run
16 concurrently. Within 72 hours of release from the custody of
17 the Bureau of Prisons the defendant shall report in person to
18 the probation department in the district to where he is
19 released.

20 I will judicial recommendation that he consider
21 participation in the probation office's Restart program
22 during supervised release if he's deemed to be an appropriate
23 candidate. I'm not going to impose a fine as I don't think
24 he has the ability to pay. No forfeiture in this case,
25 Mr. Mallard?

1 MR. MALLARD: No forfeiture, Your Honor.

2 THE COURT: While under the probation office's
3 supervision, the defendant shall comply with the following
4 terms and conditions: The standard conditions. He can't
5 commit another federal, state or local crime. You may not
6 unlawfully possess a controlled substance. You may not
7 unlawfully use a controlled substance. You'll be subject to
8 a drug test within 15 days of release and at least two
9 periodic drug tests thereafter not to exceed 104 tests per
10 year. You'll have to give DNA samples as directed by the
11 probation office and comply with any other standard
12 conditions that are in place at the time of your release.

13 In terms of special conditions. You may not
14 knowingly have any contact, direct or indirect, with the
15 cooperating witness in this case. You are to participate in
16 a program for substance abuse counseling as directed by the
17 probation office with the same testing limitations we just
18 discussed. That is, not to exceed 104.

19 You are prohibited from drinking alcohol to excess.
20 Massachusetts State law which is currently .10 blood alcohol
21 level. You must participate in a behavioral program as
22 directed by the probation office. That can include group
23 sessions led by a counselor or participation in a program
24 administered by the probation office. You must participate
25 in a vocational services training program as directed by

1 probation. That's for things like job readiness, training or
2 skills developments.

3 You must use your true name and cannot use any
4 falsifying information. And if you have the money, you're
5 going to have to contribute to the cost of evaluation,
6 treatment, and programming. If not, you don't need to.
7 Special assessment of \$300. I am going to recommend that he
8 be housed as close as possible to Massachusetts to allow him
9 time with his family and children. And the date of the
10 sentence will run from March 5, 2019, to give him credit for
11 all of the time that he has spent in prison.

12 I want to make something else clear, Mr. Carter. I
13 have wrestled with this. If anything, I erred on the side of
14 too low. I've taken into account, to the extent there was
15 double counting, I've taken into account your personal
16 history. I thought very hard about the statement that
17 Mr. Robinson and the other victim in this case made. I'm
18 hoping that what I'm giving you, which is 22 and a half
19 years, will be enough.

20 This case went to trial. I understand your
21 attorney might appeal. And I want to make clear that if
22 there is any disagreement with any of the rulings that I made
23 in sentencing today that I fully believe that the 22 and a
24 half years is an appropriate sentence. I've given long and
25 hard thought to giving a longer sentence, but I think all

1 things considered that that is an appropriate sentence taking
2 into account all the arguments of your counsel. If this
3 comes back to me, I'm apt to impose the same sort of sentence
4 because I think it's appropriate in the case to the extent
5 that the guidelines allow me to do that. Anything else from
6 the government?

7 MR. MALLARD: Not from the government, Your Honor.

8 THE COURT: Mr. Sultan?

9 MR. SULTAN: No, Your Honor.

10 THE COURT: Probation?

11 THE PROBATION OFFICER: No, Your Honor.

12 THE COURT: The case is recessed. Thanks,
13 everyone.

14 (Court recessed at 10:30 a.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter to the best of my skill and ability.

/s/ Joan M. Daly

January 15, 2020

Joan M. Daly, RMR, CRR
Official Court Reporter

Date